

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KFD ENTERPRISES, INC.,	)	Case No. 08-cv-04571-SC
	)	
Plaintiff,	)	ORDER DENYING MOTION TO STRIKE
	)	<u>JURY TRIAL DEMAND</u>
v.	)	
	)	
CITY OF EUREKA, et al.	)	
	)	
Defendants.	)	
	)	
	)	
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	)	
	)	

Now before the Court is Plaintiff KFD Enterprises, Inc.'s ("KFD") motion to withdraw its own jury trial demand and to strike Defendant City of Eureka's ("Eureka") jury demand. The motion is fully briefed<sup>1</sup> and appropriate for determination without oral argument per Civil Local Rule 7-1(b). For the reasons set forth below, KFD's motion to strike the jury trial demand is DENIED.

KFD noticed and filed this motion on April 25, 2014. ECF No. 687; Mot. at 6. On August 23, 2013, this Court issued a Status

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<sup>1</sup> ECF Nos. 687-1 ("Mot."), 689 ("Opp."), 691 ("Reply").

1 Conference Order, ECF No. 632. That Order set a trial date of June  
2 16, 2014 and specified that the last hearing date for motions would  
3 be May 2, 2014. Pursuant to Civil Local Rule 7-2(a), parties must  
4 file, serve, and notice motions 35 days prior to the assigned  
5 hearing date. Consequently, March 28, 2014 was the last date on  
6 which KFD could have timely filed its motion. Granting the motion  
7 at this late date would require Eureka to significantly alter its  
8 trial strategy and begin preparing for a nonjury trial less than  
9 three weeks before trial begins. The motion is untimely and  
10 granting it would likely prejudice Eureka. For those reasons it is  
11 DENIED. However, the Court would deny the motion even if it were  
12 to consider the motion on the merits.

13 KFD's Fourth Amended Complaint includes a demand for a jury  
14 trial pursuant to Federal Rule of Civil Procedure 38. ECF No. 410  
15 ("FAC") at 34. Eureka also includes a jury trial demand in its  
16 Fourth Amended Counter-Claim and Cross-Claim. ECF No. 355 at 26.  
17 The Federal Rules permit withdrawal of a "proper" jury demand "only  
18 if the parties consent." Fed. R. Civ. P. 38(d). Eureka has not  
19 consented, and thus KFD may withdraw its demand only if it was  
20 improper.

21 KFD argues that its jury demand was improper because it seeks  
22 only equitable relief. While a right to a trial by jury exists  
23 where a party seeks monetary damages, no such right exists where a  
24 party seeks only equitable relief. See U.S. Const. amend. VII;  
25 Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry, 494 U.S.  
26 558, 564-65 (1990) (right to jury trial depends in part on whether  
27 legal or equitable relief is sought). Though KFD's FAC makes it  
28 explicitly clear that KFD seeks damages as well as equitable

1 relief, FAC at 33-34, KFD argues that it seeks against Eureka only  
2 specific performance in the form of an injunction ordering Eureka  
3 to repair or update its sewers. KFD Reply at 4. KFD asserts that  
4 it sought damages only against the other defendants in this case,  
5 all of whom have settled. Because no defendant against whom KFD  
6 seeks monetary damages remains in the case, KFD argues that it has  
7 no right to a jury trial.

8 It is clear from KFD's FAC that it seeks monetary damages as  
9 well as injunctive relief in its claims against Eureka. In  
10 addition to the general prayer for damages, FAC at 34, KFD  
11 specifically requests damages in common law and state law claims it  
12 brought against Eureka. KFD's claims for private nuisance, public  
13 nuisance, public nuisance per se, and dangerous condition of public  
14 property all include specific claims for damages. FAC ¶¶ 77-92,  
15 98-102. For example, KFD's public nuisance claim asserts that  
16 "Plaintiff has been, and will be, damaged by incurring costs to  
17 respond to the alleged hazardous substance contamination in and  
18 around the Property in an amount to be established at trial." Id.  
19 ¶ 86. KFD's dangerous condition of public property claim, which it  
20 brought only against Eureka, includes the allegation that Eureka's  
21 failure to properly maintain its sewer caused "Plaintiff's damages  
22 including, but not limited to, response costs incurred and to be  
23 incurred in the future to properly respond to the alleged  
24 contamination near the Property, and related costs in making the  
25 property safe from contamination." Id. ¶ 102. The Court finds  
26 that KFD sought monetary damages on claims brought against Eureka,  
27 and specifically against Eureka. Therefore, KFD was entitled to a  
28 trial by jury when it filed its complaint, and its jury demand was

1 proper. KFD cannot unilaterally withdraw its jury trial demand.

2 KFD's motion to strike is untimely. But even were the Court  
3 to consider the motion on its merits, the Court would find that  
4 KFD's demand for a jury trial was proper. Consequently, KFD may  
5 not unilaterally withdraw its demand for a jury trial. Plaintiff  
6 KFD's motion to withdraw its jury trial demand and to strike  
7 Eureka's jury trial demand is DENIED.

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9 IT IS SO ORDERED.

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11 Dated: May 20, 2014

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UNITED STATES DISTRICT JUDGE

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